

**REMARKS**

Claims 13-25 were previously pending in the application. Claims 13-25 remain unchanged. New claim 26 is added. Claims 13, 19, and 26 are independent.

**The Specification Objections**

The disclosure is objected to as allegedly introducing new matter.

Particularly, the Amendment filed April 25, 2008 is objected to under 35 U.S.C. § 132(a) because it allegedly introduces new matter into the disclosure. The Office Action states that the added material which is not supported by the original disclosure are the details of how the pre-tensed spring is related in the figure, and how that spring is supported by the basket and how the spring is attached to the handle.

The Amendment filed December 19, 2008 is objected to under 35 U.S.C. § 132(a) because it introduces new matter into the disclosure. The Office Action states that the added material which is not supported by the original disclosure is as follows: The newly added figure (fig. 3) and the paragraph added to the specification contain new matter. The figure and the amended specification disclose component to a dishwasher that were not disclosed before and the fact that the handle is placed on the lower dishwasher rack not the upper dishwasher rack.

Applicants respectfully traverse these objections.

The Response to Arguments of the Office Action acknowledges that the claims and the specification disclose the pre-tensed spring, and thus, that the pre-tensed spring is not new matter. The Office Action asserts, however, that the detail of how the pre-tensed spring is related in the figure, and how that spring is supported by the basket and how the spring is attached to the handle constitutes new matter to the present application.

Applicants respectfully submit that the amendments to the specification in the Amendment filed April 25, 2008, and the Amendment filed December 19, 2008, do not constitute new matter to the present application.

Mere rephrasing of a passage does not constitute new matter. Accordingly, a rewording of a passage where the same meaning remains intact is permissible. M.P.E.P. § 2163.07.

The "pre-tensed spring" illustrated in Figure 2 was described in the originally submitted specification of the present application and therefore does not constitute new matter. For example, the specification of the present application states: "Alternatively it is also possible to support this swinging procedure of the handle 1 in the direction of the opening door 5 with a pre-tensed spring element, for example through a suitable spring element, which is supported on the crockery basket 2." [Para. 0017].

In comparison, the Amendment A filed on April 25, 2008, amended the specification to recite a pre-tensed spring element 8 is shown in Figure 2, wherein it can be seen that the pre-tensed spring element 8 has one end supported on the crockery basket 2 and another end supported on the handle 1. The pre-tensed spring element 8 supports the swinging procedure of the handle 1 in that the bias of the pre-tensed spring element 8 urges the handle 1 to move in the direction of opening of the door 5.

For at least these reasons, the amendments to the specification in the Amendment filed April 28, 2008, and the Amendment filed December 19, 2008, do not constitute new matter to the present application.

Applicants respectfully request withdrawal of this objection.

### **The Claimed Invention**

An exemplary embodiment of the claimed invention, as recited by, for example, independent claim 13, is directed to a crockery basket for a dishwashing machine comprising a handle secured to the front side for

movement about a horizontal axis and configured to move outwardly in the opening direction of a door of the dishwashing machine in response to opening of the door.

Another exemplary embodiment of the claimed invention, as recited by, for example, independent claim 19, is directed to a crockery basket for a dishwashing machine, the crockery basket comprising a handle, the handle having a hand engagement portion for engagement of the handle by hand; and an arrangement for automatically moving the handle in response to an opening of the door from a repose position into a ready engage position, the automatically moving arrangement including an anchor portion on one of the sides of the crockery basket and a connection portion of the handle at a spacing from the hand engagement portion of the handle, the connection portion of the handle being movably secured to the anchor portion on the one respective side of the crockery basket such that the handle is movable relative to the anchor portion, and the handle automatically moving in response to an opening of the door of the dishwasher from the repose position to the ready engage position at which the hand engagement portion of the handle extends outwardly in the extraction direction from the front side of the crockery basket to a greater degree than the hand engagement portion of the handle extends outwardly in the repose position.

Conventionally, after a door of the dishwashing machine is opened, a user normally grasps a wire mesh piece, which can be grasped by chance, in order to pull the crockery basket fully out of the washing container of the dishwashing machine.

When the crockery basket is stacked with items being cleaned, the user may have difficulty finding a suitable spot on the crockery basket for grasping the crockery basket and pulling it out of from the washing container. If the crockery basket is grasped from a side of the crockery basket, the castors or wheels may jam somewhat due to one-sided tensile loading on the crockery basket and cause the crockery basket to buck, whereby the objects not properly stacked in

the crockery basket, such as glassware, can move and knock against one another, which may result that crockery or glassware being damage or broken.

In stark contrast, the present invention provides a crockery basket for a dishwashing machine comprising a handle secured to the front side for movement about a horizontal axis and configured to move outwardly in the opening direction of a door of the dishwashing machine in response to opening of the door.

In this manner, the present invention provides a pivoted handle that can be gripped by the hand of the user and that ensures the introduction of a controlled traction force to the crockery basket, thereby providing a crockery basket that can be pulled reliably and securely from the washing container without reducing or limiting valuable packing space on the crockery basket.

Moreover, the present invention provides a handle arranged such that when the door of the dishwasher is opened, the handle pivots in the direction of the opening door, thereby enabling the user to easily grip the handle and ensuring an introduction of a controlled traction force to the crockery basket.

#### **The Rejections under 35 U.S.C. § 103**

In the Office Action, claims 13-25 rejected under 35 U.S.C. § 103(a) as being unpatentable over the Scian reference (EP 0855166) in view of the Finola et al reference (U.S. 5,601,195) and the Jacobus et al reference (U.S. 5,299,590).

Applicants respectfully traverse this rejection.

Applicants respectfully submit that none of the applied references discloses or suggests the features of the claimed invention including a crockery basket for a dishwashing machine comprising a handle secured to the front side for movement about a horizontal axis and configured to move outwardly in the opening direction of a door of the dishwashing machine in response to opening of the door, as recited in claim 13.

Also, none of the applied references discloses or suggests the features of the claimed invention including a crockery basket for a dishwashing machine, the crockery basket comprising a handle, the handle having a hand engagement portion for engagement of the handle by hand; and an arrangement for automatically moving the handle in response to an opening of the door from a repose position into a ready engage position, the automatically moving arrangement including an anchor portion on one of the sides of the crockery basket and a connection portion of the handle at a spacing from the hand engagement portion of the handle, the connection portion of the handle being movably secured to the anchor portion on the one respective side of the crockery basket such that the handle is movable relative to the anchor portion, and the handle automatically moving in response to an opening of the door of the dishwasher from the repose position to the ready engage position at which the hand engagement portion of the handle extends outwardly in the extraction direction from the front side of the crockery basket to a greater degree than the hand engagement portion of the handle extends outwardly in the repose position, as recited in claim 19.

As explained above, these features are important for providing a pivoted handle that can be gripped by the hand of the user and that ensures the introduction of a controlled traction force to the crockery basket, thereby providing a crockery basket that can be pulled reliably and securely from the washing container without reducing or limiting valuable packing space on the crockery basket. Moreover, the present invention provides a handle arranged such that when the door of the dishwasher is opened, the handle pivots in the direction of the opening door, thereby enabling the user to easily grip the handle and ensuring an introduction of a controlled traction force to the crockery basket.

Contrary to the assertions in the Office Action, Applicants respectfully submit that the Scian reference very clearly does not teach or suggest all of the features of the claimed invention and that these features very clearly would not

be an obvious matter of design choice. Moreover, it is not appropriate to rely solely on case law as the rationale to support this rejection, since Applicants very clearly have demonstrated the criticality of these features, and the Office Action clearly fails to establish a prima facie case with respect to these features allegedly being an obvious matter of design choice.

The Office Action relies on the claims of the Scian reference for allegedly disclosing a handle (fig. 1, part 6) with a fulcrum point (fig. 1, part 8). The Office Action asserts that the term "fulcrum" as used in the Scian reference means "the point or support which a lever pivots", citing [www.dictionary.com](http://www.dictionary.com), last visited January 9, 2008. Next, the Office Action asserts that it would have been an obvious matter of design choice to have made the handle adjustable around the fulcrum, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. The Office Action also asserts that it would have been an obvious matter of design choice to make the handle explicitly movable around the fulcrum point, since it has been held that making an old device movable without producing new and unexpected results involves only routine skill in the art.

Contrary to the assertions in the Office Action, Applicants respectfully submit that, when properly considered as a whole, the Scian reference very clearly does not teach or suggest the handle pivoting about the fulcrum. Instead, the Scian reference very clearly and explicitly teaches that the handle is prevented from rotating in any manner about its fulcrum.

The Scian reference discloses a pull out basket for a dishwashing machine wherein the pull out basket includes a handle (6) secured at fulcrum (8) to a front wall (5) of the basket. The Scian reference explicitly discloses that the handle (6) remains substantially flush with the front surface (5) of the pull out basket. See, e.g., col. 3, lines 1-9. Particularly, the Scian reference disclosed that "[t]he resting means 13, 14 are such as to in fact prevent the handle from rotating in any manner about its fulcrum 8."

In stark contrast, the claimed invention provides, for example, a handle that is configured to move outwardly in the opening direction of a door of the dishwashing machine in response to opening of the door, as recited in claim 13. Also, the claimed invention provides an arrangement for automatically moving the handle in response to an opening of the door from a repose position into a ready engage position, the automatically moving arrangement including an anchor portion on one of the sides of the crockery basket and a connection portion of the handle at a spacing from the hand engagement portion of the handle, the connection portion of the handle being movably secured to the anchor portion on the one respective side of the crockery basket such that the handle is movable relative to the anchor portion, and the handle automatically moving in response to an opening of the door of the dishwasher from the repose position to the ready engage position at which the hand engagement portion of the handle extends outwardly in the extraction direction from the front side of the crockery basket to a greater degree than the hand engagement portion of the handle extends outwardly in the repose position, as recited in claim 19.

The Scian very clearly fails to disclose or suggest all of the features of independent claims 13 and 19.

By explicitly teaching that the handle (6) remains substantially flush with the front surface (5) of the pull out basket and that the resting means 13, 14 are such as to in fact prevent the handle from rotating in any manner about its fulcrum 8, Applicants also submit that the Scian reference very clearly teaches away from any such combination in which the handle pivots about the fulcrum.

The Scian reference fails to provide any hint of the desirability of a handle for a pull out dishwashing machine basket that moves in response to an operation of another component of a dishwashing machine such as, for example, the opening of a door of a dishwashing machine as is recited in claim 13 and somewhat similarly in claim 19. Thus, assuming in *arguendo* that the Scian reference teaches a relative movement between the handle and the pull out

basket (which the Scian reference very clearly does not), the Scian reference still would fail to teach or suggest to one of skill in the art the desirability of a handle for a pull out dishwashing machine basket that moves in response to an operation of another component of a dishwashing machine, let alone the desirability of a handle for a pull out dishwashing machine basket that moves in response to the opening of a door of a dishwashing machine, as is recited in claims 13 and 19.

Moreover, in stark contrast to the assertions in the Office Action, Applicants respectfully submit that these features very clearly would not be an obvious matter of design choice involving simply providing adjustability, where needed, or simply making an old device movable without producing new and unexpected results. Furthermore, it is not appropriate to rely solely on case law as the rationale to support this rejection, since Applicants very clearly have demonstrated the criticality of these features, and the Office Action clearly fails to establish a prima facie case with respect to these features allegedly being an obvious matter of design choice.

As discussed in MPEP § 2144 and 2144.04, if the facts in a prior legal decision are sufficiently similar to those in an application under examination, the examiner may use the rationale used by the court. [...] If the applicant has demonstrated the criticality of a specific limitation, it would not be appropriate to rely solely on case law as the rationale to support an obviousness rejection.

In the present application, Applicants very clearly have demonstrated that these features are important for providing a pivoted handle that can be gripped by the hand of the user and that ensures the introduction of a controlled traction force to the crockery basket, thereby providing a crockery basket that can be pulled reliably and securely from the washing container without reducing or limiting valuable packing space on the crockery basket. Moreover, the present invention provides a handle arranged such that when the door of the dishwasher is opened, the handle pivots in the direction of the opening door, thereby

enabling the user to easily grip the handle and ensuring an introduction of a controlled traction force to the crockery basket.

Applicants respectfully submit that it clearly is not appropriate to rely solely on case law as the rationale to support this rejection, since Applicants very clearly have demonstrated the criticality of these features. For at least these reasons, Applicants respectfully submit that the office action fails to establish a prima facie case of obviousness.

The Finola et al reference and the Jacobus et al reference do not remedy the deficiencies of the Scian reference. Indeed, these references have absolutely nothing to do with providing a handle of a crockery basket, let alone a handle secured to the front side for movement about a horizontal axis and configured to move outwardly in the opening direction of a door of the dishwashing machine in response to opening of the door, as recited in claim 13 (and similarly in claim 19).

Instead, the Finola reference very clearly discloses comb-like dividers 5 for a basket of a dishwasher, not a handle. The Finola reference provides absolutely no hint or suggestion to one of skill in the art to provide a movable handle for a pull out dishwashing machine basket.

The Jacobus et al reference discloses an article retaining mechanism for retaining articles in the basket of the dishwashing machine, not a handle. The Jacobus et al reference provides absolutely no hint or suggestion to one of skill in the art to provide a movable handle for a pull out dishwashing machine basket.

For at least these reasons, the Finola et al reference and the Jacobus et al reference very clearly do not remedy the deficiencies of the Scian reference.

Moreover, the Office Action makes the conclusory statement that the alleged combination of the applied references would have yielded predictable results to one of ordinary skill in the art at the time of the invention, meaning that the fact that an object can swing forward on a pivot point due to the force of gravity after being released as allegedly taught by the Finola reference in

apparatus the Scian reference in view of the Jacobus et al reference to yield the predictable result of the door acting as the latch for the handle and once that the door is moved that gravity would take over and swing the handle out around fulcrum/pivot point. The Office Action fails to provide any support for these conclusions.

Appellants respectfully submit that such conclusory statements are insufficient to provide a prima facie case for obviousness because the Office Action fails to provide an adequate rationale for modifying the prior art as required by *KSR International v. Teleflex Inc.* 82 U.S.P.Q. 2d 1385 (2007).

"[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness." (In re Kahn, 441 F.3d 977, 988 (CA Fed. 2006) cited with approval in *KSR*).

The Office Action provides absolutely no hint of any articulated reasoning with any rationale underpinning to support a legal conclusion of obviousness. As such, the Office Action fails to present a prima facie case for obviousness.

The Office Action has provided no articulated reasoning to modify the Scian reference to arrive at the claimed invention, except from using Appellant's invention as a template through hindsight reconstruction of Appellant's claims. Indeed, the alleged modifications to the Scian reference would require ignoring the explicit disclosure of the Scian reference that the resting means 13, 14 are such as to in fact prevent the handle from rotating in any manner about its fulcrum 8, which very clearly teaches away from the alleged combination being asserted by the Office Action.

For at least the foregoing reasons, none of the applied references discloses or suggests the subject matter defined by independent claims 13 and 19.

Applicants respectfully request withdrawal of these rejections.

**CONCLUSION**

In view of the above, entry of the present Amendment and allowance of claims 13-26 are respectfully requested. If the Examiner has any questions regarding this amendment, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,

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